

REMARKS/ARGUMENTS

Claims 13, 14, and 16-19 are pending in the present application. Claims 13, 14, and 16-19 are amended. Claims 41-52 are added. Support for the amendments to the claims and the newly added claims may at least be found in the language of original claims 1-12 and 27-40, in the Specification on page 1, lines 18-22, page 4, lines 7-9, page 4, line 29 – page 5, line 3, page 5, lines 26-29, page 6, lines 2-4, and page 6, line 23 – page 7, line 4, and in Figure 1, element 12 and Figure 3, all elements. As a result, no new matter is added by any of the amendments to the claims or the newly added claims. Reconsideration of the claims is respectfully requested.

In this Amendment, Applicants amended claims 13, 14, and 16-19 in this application. Applicants are not conceding in this application that the subject matter encompassed by the earlier presented claims is not patentable over the art cited by the Examiner. The present claim amendments in this Amendment are solely to facilitate expeditious prosecution of this application. Applicants respectfully reserve the right to pursue these claims and additional claims in one or more continuations and/or divisional applications.

I. Telephonic Interview with Primary Examiner Dinh on March 18, 2009

Applicants thank Primary Examiner Khanh Q. Dinh for the courtesy extended to Applicants' representative during the March 18, 2009 telephonic interview. During the teleconference, the Examiner and Applicants' representative discussed proposed amendments to the claims to further distinguish the present invention from the cited prior art. The Examiner appeared to indicate that the amended independent claim language contained in this Response to Office Action would overcome the cited art. Therefore, it is Applicants' representative's understanding that barring additional materially relevant prior art being found in an updated search, the present claims are now in condition for allowance. The substance of the interview, as well as additional reasons that the claims are not anticipated, is summarized in the remarks of Section III, which follows below.

II. Objection to Claims, Claim 13

The Examiner objects to claim 13 because of informalities. In objecting to the claim the Examiner states, "The word 'NACK' should be spelled out. Appropriate correction is required."

Office Action dated January 2, 2009, page 2, item 2. In response, claim 13 is amended to recite “negative acknowledgement” instead of “NACK” in accordance with the Examiner’s requirement. As a result, the objection to claim 13 has been overcome.

III. 35 U.S.C. § 102, Anticipation, Claims 13, 14, and 16-19

The Examiner rejects claims 13, 14, and 16-19 under 35 U.S.C. § 102(e) as allegedly being anticipated by *Earl*, U.S. Patent No. 6,721,907 (“Earl”). This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case, each and every feature of the presently claimed invention is not identically shown in the cited reference as arranged in the claims.

As amended independent claim 13 recites “responsive to not recently receiving any negative acknowledgements at said negative acknowledgement server from said multiplicity of subscribers, disturbing by said attentiveness monitor in said message sender a flow of data between a packet sender and said multiplicity of subscribers over said network by creating a negative acknowledgement generation incident that intentionally causes one or more of said multiplicity of subscribers to send a negative acknowledgement to said negative acknowledgement server to indicate that one or more packets in said sequence of packets are missing.” The Examiner cites *Earl*, column 14, line 12 to column 15, line 46 and Figures 3A to 3E as disclosing “...detecting if a data packet was dropped and reprocessing data packet for retransmissions...” Office Action dated January 2, 2009, page 3. *Earl*, column 14, lines 45-48 teaches that “[a]s soon as a data packet or heartbeat message is determined to have been lost, the receiver sends back a Negative Acknowledgement (NAK), which includes the last data packet we saw in the correct sequence.” In other words, *Earl* only teaches that a receiver sends a NAK to the source after determining that a packet is missing in a transmission. *Earl* makes no

reference to the source disturbing the data flow between the source and the receiver by creating a negative acknowledgement generation incident that intentionally causes the receiver to send a negative acknowledgement in response to the source not receiving any negative acknowledgements. Therefore, Earl does not teach the above-recited feature in amended claim 13.

As a result, Earl does not identically teach each and every element recited in amended claim 13 of the present invention. Accordingly, the rejection of independent claim 13 as being anticipated by Earl has been overcome.

In view of the arguments above, amended independent claim 13 is in condition for allowance. Claims 14 and 16-19 are dependent claims depending on independent claim 13. Consequently, claims 14 and 16-19 also are allowable, at least by virtue of their dependence on an allowable claim. Furthermore, these dependent claims also contain additional features not taught by Earl.

For example, amended dependent claim 16 of the present invention recites that “...said negative acknowledgement generation incident comprises altering sent and pending packet queues by generating an empty packet with only a header and no data payload within said sequence of packets, placing said sequence of packets that includes said empty packet in said pending packet queue, transmitting said sequence of packets in said pending packet queue to said multiplicity of subscribers except said empty packet, and placing said sequence of packets that includes said empty packet not transmitted in said sent packet queue.” The Examiner cites Earl, column 15, line 8 to column 16, line 14 as disclosing that “...said disturbing NACK generation incident comprises altering sent and pending queues....” Office Action dated January 2, 2009, page 3. Earl, column 15, lines 10-23 teaches that the source “...maintains a history of recent packets sent” and that the source “...sends a special protocol message called...a reset sequence number packet...requesting a specific receiver to reset the sequence number as if the receiver received the packet with the sequence number contained in the NAK and all packets before it” when the NAK contains a sequence number that is older than the oldest one maintained by the source. In other words, Earl teaches that the receiver resets or alters the sequence number of a packet in response to receiving a reset sequence number packet from the source. However, Earl makes no reference to altering queues by generating an empty packet with only a header and no

data payload within the sequence of packets. Therefore, Earl cannot teach the above-recited features in amended claim 16.

As a further example, amended claim 17 recites that “...said negative acknowledgement generation incident comprises intentionally skipping transmission of a packet in said sequence of packets and placing said packet that was never transmitted to said multiplicity of subscribers in a sent packet queue.” The Examiner cites Earl, column 10, line 27 to column 11, line 36 as disclosing that “...said disturbing NACK generation incident comprises placing a packet that was never transmitted in a sent queue....” Office Action dated January 2, 2009, page 3. Earl, column 10, lines 49-51 teaches that “[h]eartbeat messages are sent across the switching fabric using reliable communication to distribute operability information about the components.” Earl, column 11, lines 15-20 teaches that “...a local process is declared down or inoperable if the local LSS process fails to receive a heartbeat message for a single heartbeat interval, and a route is declared down or inoperable if the monitor primary fails to receive packets or heartbeat messages from an LSS process for two heartbeat intervals....” However, Earl makes no reference to intentionally skipping transmission of a heartbeat message or packet in the sequence of packets to intentionally cause a negative acknowledgement. Therefore, Earl cannot teach the above-recited features in amended claim 17.

Therefore, the rejection of claims 13, 14, and 16-19 under 35 U.S.C. § 102(e) has been overcome.

IV. Added Claims 41-52

Claims 41-52 are added by this Response to Office Action. Method claims 13, 14, and 16-19 are representative of apparatus claims 41-46 and computer product claims 47-52 with regard to similarly recited subject matter. Therefore, because claims 13, 14, and 16-19 are in condition for allowance as shown in Sections III above, newly added claims 41-52 also are in condition for allowance.

V. Conclusion

It is respectfully urged that the subject application is patentable over the cited prior art reference and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

/Peter B. Manzo/

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